

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:	ADMINISTRATIVE ORDER
LARRY EISENHAUER	NO. 2013-AQ- 28
Woodbury County, Iowa	NO. 2013-SW- 24

TO: Larry Eisenhauer
1801 Glen Ellen Road
Sioux City, Iowa 51106

I. SUMMARY

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Bryon Whiting, Field Office #3
Iowa Department of Natural Resources
Gateway North Mall - 1900 North Grand
Spencer, Iowa 53101
Phone : 319/653-2135

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone : 515/725-9572

Appeal, if any, addressed to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Payment of Penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC)

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chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this Order.

III. STATEMENT OF FACTS

1. Larry Eisenhauer owns property located at 2523 Port Neal Road in rural Sergeant Bluff, Iowa (NE ¼ Section 19, Liberty Township, Woodbury County, Iowa). Mr. Eisenhauer used the property to store, stockpile, or dispose of trees and tree trimmings generated off-site from his business Star Tree Service, Inc. The property had formerly been used by several tanning companies where hides were processed and much of the waste was treated on site. The site is currently being monitored by the DNR for potential contamination from the former tanning companies.

2. On June 15, 2011, Cindy Martens, DNR Field Office 3 environmental specialist senior, met with Mr. Eisenhauer to ensure that the large pile of trees, baled tires, and railroad ties on his property would not be impacted by flood waters. Mr. Eisenhauer was instructed to start removing the solid waste from his property and not to store solid waste materials on the property. Ms. Martens instructed Mr. Eisenhauer that he could not burn tree and tree trimmings that were brought on site from his business. Mr. Eisenhauer told Ms. Martens that he would start selling the tires, chip the large wood pile, and cut up and sell the wood.

3. On June 23, 2011, Bryon Whiting, DNR Field Office 3 environmental specialist senior, emailed Mr. Eisenhauer a copy of the open burning rules. The email explained that the burning of the tree and tree trimmings was not allowed on the property and only municipalities were allowed to accumulate and burn tree and tree trimmings.

4. In May 2012, Julie Sievers, DNR Field Office 3 environmental specialist senior, visited Mr. Eisenhauer's property and noted the large amount of trees and tree trimmings at the site. She noted that the size of the pile had increased. Ms. Sievers informed Mr. Whiting of her observations at the property.

5. On August 13, 2012, DNR Field Office 3 received a complaint about open burning at Mr. Eisenhauer's property. The complaint stated that Mr. Eisenhauer burned railroad ties and trees on the property on August 10, 2012 and that the burning continued all weekend. The complaint stated that the smoke was very black coming from the site.

6. On August 20, 2012, Mr. Whiting and John Pylelo, Woodbury County Planning and Zoning Director, visited Mr. Eisenhauer's property to investigate the complaint. They observed 4-5 recently dug pits that appeared to be intended for the open burning and improper solid waste disposal. Mr. Whiting observed evidence of open burning in two of the pits. There was combustible material in the pits, including railroad ties and old furniture. Mr. Whiting observed ash and smoldering

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ash in the pits. On August 21, 2012, Mr. Eisenhauer called Ms. Sievers to discuss the investigation. He stated that he burned trees from the property and 10-15 old railroad ties. Also on August 21, 2012, Mr. Eisenhauer and Mr. Pylelo spoke regarding the inspection. Mr. Pylelo told Mr. Eisenhauer that he could not burn, excavate, or fill the existing pits. Mr. Eisenhauer stated that he burned some railroad ties. Mr. Eisenhauer explained that the pits were dug to allow for controlling on-site burning.

7. On August 29, 2012, Mr. Eisenhauer was issued a Notice of Violation letter for the open burning and improper solid waste disposal violations observed by DNR Field Office 3. The letter informed Mr. Eisenhauer that the matter was being referred for further enforcement.

8. On November 8, 2012, Mr. Whiting returned to Mr. Eisenhauer's property. Mr. Whiting observed an estimated 500 railroad ties of north of the building, an estimated 500 railroad ties north of the North Field Landfill area, and an estimated 75 railroad ties near the southwest corner of the building.

9. In August 2013, Mr. Eisenhauer submitted a letter to the DNR indicating that a large portion of the property had been cleaned up. He indicated that he was stockpiling a small amount of firewood for processing. On August 29, 2013, Mr. Whiting returned to the property and observed areas that still needed to be cleaned up. He noted a pile of burned and partially burned trees located on top of the old lagoon, numerous piles of tree and tree trimmings located on top of the old lagoon, approximately 400 waste railroad ties located in the extreme northeast corner of the property and at least one bale of waste tires located on the bottom ground adjacent and to the northeast of the old lagoon.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). Mr. Whiting observed evidence of the open burning of an unknown number of railroad ties and old furniture at Mr. Eisenhauer's property. The above-facts indicated violation of this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

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4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Mr. Whiting observed tree and tree trimmings not originating on site, railroad ties, tire bales, and ash from open burning being disposed of at Mr. Eisenhower's property instead of the materials being disposed of at a permitted landfill or at municipal tree and tree trimming site. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered that Mr. Eisenhower does the following:

1. Immediately cease all open burning and improper solid waste disposal, including but not limited to the burning of or improper disposal of railroad ties, furniture, and tree and tree trimmings not generated on site, at this site;
2. Remove all remaining solid waste on the property, including but not limited to the pile of burned and partially burned trees located on top of the old lagoon, numerous piles of tree and tree trimmings located on top of the old lagoon, approximately 400 waste railroad ties located in the extreme northeast corner of the property and at least one bale of waste tires located on the bottom ground adjacent and to the northeast of the old lagoon, within 60 days of receipt of this Order and submit the landfill receipts to DNR Field Office 3 within 10 days of the disposal; and
3. Pay an administrative penalty in the amount of \$4,675.00 within 60 days of receipt of this Order, subject to appeal rights stated in Section VII.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. Iowa Code section 455B.146A provides for more serious criminal sanctions for the air quality violations. 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a \$4,675.00 penalty. The administrative penalty assessed by this Order is determined as follows:

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Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." The economic benefit of the improper disposal by open burning is unknown because the amount of solid waste disposed of is unknown because of the open burning. The economic benefit would be limited to landfill disposal fees and associated transportation costs. The estimated economic benefit of the open burning is at least \$200.00. Mr. Eisenhauer has also been able to delay the cost of proper disposal of the tire bales, the railroad ties, and the tree and tree trimmings not generated on site. These delayed costs have created an economic benefit for Mr. Eisenhauer. The DNR estimates that at least 400 railroad ties remain stockpiled at the property. The estimated disposal fee, including transportation costs, for the railroad ties is \$450.00. Additionally, there is at least 1 bale of waste tires remaining at the site and thus far Mr. Eisenhauer has avoided the disposal costs of at least \$25.00 for the baled tires. Based on this information, it is estimated that Mr. Eisenhauer has gained an economic benefit of at least \$675.00 and that amount is assessed for this factor.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. The open burning and improper solid waste disposal may adversely impact the health of the citizens in the area surrounding the burn site. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Mr. Eisenhauer has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. On several occasions, DNR Field Office 3 explained the open burning and solid waste regulations to Mr. Eisenhauer. Based on the above considerations, \$2,500.00 is assessed for this factor.

VII. APPEAL RIGHTS

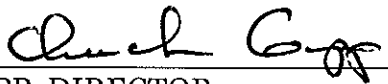
Pursuant to Iowa Code sections 455B.138 and 455B.308, and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case

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hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 30th day of
October, 2013.

AQB (Con 10-6 Woodbury County); Kelli Book; Field Office 3; EPA; VI.C and VII.C.1